

ESTTA Tracking number: **ESTTA655065**

Filing date: **02/10/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Atlantic Industries, LLC
Granted to Date of previous extension	02/11/2015
Address	1018 Creek View Drive Whitefish, MT 59937 UNITED STATES
Party who filed Extension of time to oppose	Atlantis Industries, LLC
Relationship to party who filed Extension of time to oppose	Typographical error in original entry.

Attorney information	Kevin R, Haley Brann & Isaacson 184 Main Street Lewiston, ME 04240 UNITED STATES trademarks@brannlaw.com
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Applicant Information

Application No	86065776	Publication date	10/14/2014
Opposition Filing Date	02/10/2015	Opposition Period Ends	02/11/2015
Applicant	Nutrition Training Systems LLC Suite #409 Davie, FL 33314 UNITED STATES		

Goods/Services Affected by Opposition


Class 005. First Use: 2010/11/01 First Use In Commerce: 2010/11/01
All goods and services in the class are opposed, namely: Dietary and nutritional supplements; Nutritional supplements; Nutritional supplements in the form of powder and capsules

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2000435	Application Date	05/11/1995
Registration Date	09/10/1996	Foreign Priority Date	NONE
Word Mark	HAMMER GEL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1996/02/23 First Use In Commerce: 1996/02/23 nutritional supplements, namely carbohydrate supplements		

U.S. Registration No.	3062289	Application Date	06/15/2004
Registration Date	02/28/2006	Foreign Priority Date	NONE
Word Mark	HAMMER NUTRITION		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1995/10/01 First Use In Commerce: 1995/10/01 Nutritionally fortified powdered and ready-made beverages for athletes		

U.S. Registration No.	3171466	Application Date	01/05/2006
Registration Date	11/14/2006	Foreign Priority Date	NONE
Word Mark	HAMMER BAR		

Design Mark	<h1>Hammer Bar</h1>
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2006/01/04 First Use In Commerce: 2006/01/04 Organic Nutritional Food Supplement

Attachments	78435322#TMSN.png(bytes) 78785549#TMSN.png(bytes) 20150210 Notice of Opposition [SLEDGE].pdf(22315 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Kevin R. Haley/
Name	Kevin R, Haley
Date	02/10/2015

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ATLANTIC INDUSTRIES, LLC)	
d/b/a HAMMER NUTRITION)	
)	
Opposer)	In the matter of:
)	Application Serial No. 86-065,776
v.)	For the mark SLEDGEHAMMER
)	Published on October 14, 2014
NUTRITION TRAINING SYSTEMS)	
d/b/a MUSCLEOLOGY SPORTS)	
NUTRITION)	
)	
Applicant)	Opposition No. _____
)	

NOTICE OF OPPOSITION

This matter concerns the application for registration of the mark SLEDGEHAMMER for dietary and nutritional supplements, nutritional supplements, and nutritional supplements in the form of powder and capsules in International Class 005, filed September 16, 2013 by Nutrition Training Systems d/b/a Muscleology Sports Nutrition (“Applicant”), assigned Serial No. 86-065, 776, and published for opposition in the Official Gazette of October 14, 2014. Atlantic Industries, LLC d/b/a Hammer Nutrition (“Opposer”) believes it would be damaged by registration of the above-referenced mark in light of its decades-long use of registered “Hammer” trademarks in the same class, on the same products, and therefore opposes registration pursuant to 15 U.S.C. § 1063 and 37 C.F.R. § 2.104.

The grounds for opposition are as follows:

1. Opposer Atlantic Industries, LLC, d/b/a Hammer Nutrition is a Delaware limited liability company with a principal place of business at 1018 Creek View Drive, Whitefish, MT 59937.

2. Opposer has been a provider of endurance fuels, supplements, and education to athletes since 1987.

3. Opposer has a registered trademark for the marks HAMMER NUTRITION (No. 3,062,289), HAMMER GEL (No. 2,000,435) and HAMMER BAR (No. 3,171,466) (collectively, “Opposer’s Marks”).

4. The mark HAMMER NUTRITION was registered February 28, 2006, and claims a first use date of October 1, 1995. Opposer, since at least October of 1995, has been, and is now, using the mark HAMMER NUTRITION in connection with nutritionally fortified powdered and ready-made beverages for athletes.

5. The mark HAMMER GEL was registered September 10, 1996, and claims a first use date of February 23, 1996. Opposer, since at least February of 1996, has been, and is now, using the mark HAMMER GEL in connection with nutritional supplements, namely carbohydrate supplements.

6. The mark HAMMER BAR was registered November 14, 2006, and claims a first use date of January 4, 2006. Opposer, since at least January of 2006, has been, and is now, using the mark HAMMER BAR in connection with organic nutritional food supplements.

7. Each of Opposer’s Marks claims goods and services categorized in International Class No. 5.

8. Applicant filed to register the proposed mark SLEDGEHAMMER, Serial No. 86–065,776, on September 16, 2013, claiming use in commerce since November 1, 2010, as is evidenced by publication of said mark in the Official Gazette in the October 14, 2014, issue (“Applicant’s Mark”).

9. Applicant's Mark covers goods and services that *also* fall within International Class No. 5, specifically, dietary and nutritional supplements, nutritional supplements, and nutritional supplements in the form of powder and capsules.

10. Opposer's use of one or more of Opposer's Marks has been valid and continuous since at least October of 1995, nearly *two decades* before the instant application and fifteen years before Applicant's claimed first use in commerce. Opposer's Marks have not been abandoned. Opposer's Marks are symbolic of extensive good will and customer recognition. As a result of the substantial amounts of time and effort in advertising and promotion, Opposer has developed an exceedingly valuable goodwill in respect to Opposer's Marks.

11. Applicant's Mark and Opposer's Marks are very similar in appearance, sound, connotation, and commercial impression, containing the predominant word "HAMMER," which is also part of Opposer's brand name.

12. The nature of Applicant's product offerings and Opposer's product offerings are similar and related, as demonstrated by the fact that the identified offerings fall within the identical class, International Class 005.

13. Upon information and belief, Opposer alleges that the goods of Opposer and Applicant are offered or will be offered in similar channels of commerce and offered to similar consumers.

14. Applicant's use of and application to register SLEDGEHAMMER is without the consent or permission of Opposer.

15. Applicant's Mark and Opposer's Marks are likely to be confused.

16. Opposer's first use of each of Opposer's Marks precedes Applicant's first use of Applicant's Mark in commerce.

17. Opposer's first use of each of Opposer's Marks precedes the filing of Applicant's application to register Applicant's Mark in the U.S. Patent & Trademark Office.

18. As a result of confusing similarity between Opposer's Marks and Applicant's Mark and because the goods of Applicant and Opposer are very similar, are in similar channels of commerce, and are directed to similar customers, registration of the proposed mark SLEDGEHAMMER in connection with Applicant's goods is likely to deceive purchasers as to the source or sponsorship of such goods, to cause confusion, to cause mistake, or to deceive.

19. Consumers familiar with the Opposer's Marks are likely to mistakenly believe that Applicant's goods are sponsored, authorized, associated with or otherwise approved by Opposer because the proposed mark closely resembles Opposer's Marks. Deficiencies or faults in the quality of Applicant's goods are likely to reflect negatively upon, tarnish and seriously injure the reputation which Opposer has established for goods provided under Opposer's Marks. This confusion is likely to result in loss of revenues to Opposer and damage Opposer's reputation.

20. Applicant's use of the Applicant's Mark does or is likely to falsely suggest a relationship between Applicant's goods and Opposer. Such use of the SLEDGEHAMMER mark is likely to cause confusion, mistake or deception with respect to the source or sponsorship of Applicant's goods. Such use is likely to cause a significant level of sales by Applicant to consumers who would be confused by the use of the proposed mark into believing that Opposer is the source of Applicant's goods, resulting in ill-gotten gains by Applicant. Applicant's use of the proposed mark is therefore likely to result in Applicant's

trading off and benefiting from the goodwill associated with Opposer, resulting in ill-gotten gains by Applicant.

21. Opposer is likely to be damaged by registration of Applicant's Mark in that the *prima facie* effect of registration of Applicant's mark would tend to impair Opposer's right to use the wording contained in Applicant's Mark.

22. For the foregoing reasons, the registration sought by Applicant is contrary to the provisions of the Lanham Act, and Opposer would be damaged thereby.

WHEREFORE, Opposer prays that the application for registration of the mark SLEDGEHAMMER, Serial No. 86-065, 776, be refused and that this Opposition be sustained in favor of Opposer. The fee required by Sect. 2.6(a)(17) is enclosed. Opposer hereby appoints Kevin R. Haley and Stacy O. Stitham, members of the Bars of the State of Maine, at BRANN & ISAACSON, 184 Main Street; Box 3070. Lewiston, Maine 04243-3070, to act as attorneys in the matter of the opposition identified above, to prosecute said opposition, to transact all business in the Patent and Trademark Office, and in the United States courts connected with the opposition, to sign its name to all papers which are hereinafter to be filed in connection therewith, and to receive all communications relating to the same.

Dated: February 10, 2015

/s/ /Stacy O. Stitham/

Kevin R. Haley (Me. Bar No. 7943)

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Stacy O. Stitham (Me. Bar No. 10016)

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*Attorneys for Atlantic Industries, LLC d/b/a
Hammer Nutrition*

CERTIFICATE OF FILING

I certify that on February 10, 2015, the foregoing Notice of Opposition was filed with the Trademark Trial and Appeal Board using the Electronic System for Trademark Trial and Appeals.

/s/ /Stacy O. Stitham /
Stacy O. Stitham

CERTIFICATE OF SERVICE

I certify that on February 10, 2015, a true and complete copy of the foregoing Notice of Opposition was served on Applicant Nutrition Training Systems d/b/a Muscleology Sports Nutrition by email and first class mail, postage prepaid to the following counsel of record for Applicant:

Christian Sanchelima
235 SW 42nd Avenue
Miami, FL 33134
chris@sanchelima.com

/s/ /Stacy O. Stitham/
Stacy O. Stitham